

# IN THE DISTRICT COURT OF ^ COUNTY, NEBRASKA

^,

Plaintiff^,

vs.

^,

Defendant^.

Case No. ^

## PRETRIAL ORDER

**DATE OF CONFERENCE:** ^.

**PLACE OF CONFERENCE:** ^ County Courthouse, ^, Nebraska.

### APPEARANCES:

For the plaintiff(s): ^.

For the defendant(s): ^.

1. **INTERNET HOME PAGE:** The court's Internet home page address is:

**[www.nol.org/home/DC8/](http://www.nol.org/home/DC8/) or [www.dc8.state.ne.us](http://www.dc8.state.ne.us)**

2. **ADDITIONAL PARTIES:** After discussion between the court and counsel, it was determined that there are no additional parties which are necessary parties to the action. No motions to add or substitute parties will be considered hereafter except upon showing of good cause including, but not limited to, a showing that the determination to add such parties could not have been made in the exercise of reasonable diligence prior to the date of this pretrial conference.

3. **JURY:** At the telephone progression conference, all parties had stipulated that the trial may be to a jury of seven persons, subject to the following:

A. No alternate need be selected, and in the event that one of the 7 jurors must be discharged prior to verdict, the trial or deliberations shall proceed with the remaining six jurors;

B. The jury will be selected by drawing 15 persons for examination, and each side will be allowed 4 peremptory challenges after the panel is passed for cause;

- C. All seven jurors will participate in the deliberations and verdict, except that after six hours of deliberations a verdict may be reached under the 5/6ths rule by the agreement of six jurors; and,
  - D. No party timely filed any withdrawal from the stipulation by a timely written request for 12-person jury.
4. **JURY:** At the telephone progression conference, all parties stipulated that the trial may be to the court without a jury, a jury being expressly waived.
  5. **JURY:** The parties previously elected a 12-person jury. ^The parties stipulated that in the event that it was necessary to discharge a juror, the trial would proceed with eleven (11) jurors and expressly waive the selection of an alternate juror. ^The parties do not waive the statutory procedures for selection of any alternate juror(s).
  6. **SETTLEMENT EFFORTS:** The parties, through their respective counsel, have assured the court that they have diligently pursued all reasonable efforts to settle the case without the necessity of a trial. The parties, through their respective counsel, therefore have stipulated and agreed that, if the case is settled on or after 24 hours before the scheduled commencement of trial, any jury costs incurred by reason of attendance at trial shall be taxed as costs to the parties, jointly and severally, unless such costs are expressly allocated otherwise between the parties as part of such settlement.
  7. **TRIAL:** Trial shall be held as follows:
    - A. TYPE: The trial shall be to ^ (see ¶ 3 above).
    - B. PLACE: The trial will be held at the District Courtroom, ^ County Courthouse, ^, Nebraska.
    - C. DAY(S): The trial is budgeted for ^ day(s) of trial time.
    - D. DATE/TIME: The trial shall be subject to call at **Trial Session No. ^**, unless subsequently continued to a later trial session. Unless otherwise notified by the court at the time of call for trial, the trial shall begin at 9:00 a.m. ^ (Although the court would have scheduled this matter for an earlier trial session, at the request of counsel the matter was deferred to a later trial session.)
    - E. PRIORITY FOR TRIAL:
      - (1) Priority Date: ^.

- (2) Except as otherwise ordered for efficient use of the available time, the case shall be heard at the trial session in order of priority by date of placement on the trial calendar (the “priority date”), except that criminal cases shall have first priority for trial, and civil cases having statutory priority shall be advanced for trial prior to cases not having statutory priority.
  - (3) The status of the court’s trial calendar, kept continually current, shall be determined by viewing the trial list on the court’s Internet site.
- F. CONTINUANCE TO SUBSEQUENT TRIAL TERM: If the trial is not called at the initial trial session provided above, the trial shall automatically be continued to the next trial session thereafter for that county (East Trial Session for trials in Boyd or Holt Counties, or West Trial Session for trials in Blaine, Brown, Cherry, Keya Paha, or Rock Counties), subject to the following:
- (1) Because of conflicts with counsels’ schedules disclosed at pretrial, the trial will be automatically passed as to Trial Session(s) No(s). ^ **[none]** without any change of priority date.
  - (2) Except for such disclosed conflicts, the court will not consider any motion for continuance not heard by the court before the close of the trial session for that county immediately preceding the trial session at which the trial would otherwise be subject to call (e.g., if the trial would otherwise be subject to call at East Trial Session No. 5, the court will not consider any motion for continuance not brought on for hearing before the close of East Trial Session No. 3).
  - (3) Except for such disclosed conflicts, the granting of a motion for continuance shall constitute a removal from and replacement to the trial calendar, and which shall change the “priority date” to the date of rendition of such order.
  - (4) Motions for continuance for undisclosed or subsequently occurring schedule conflicts or for other good cause are subject to the usual requirements of Rules 8-3 and 8-4, except that a motion may be heard upon 48-hours notice to opposing counsel when accompanied by an affidavit stating **facts** demonstrating that such conflict or cause was not discoverable in the exercise

of reasonable diligence in time to be heard in conformity with the normal requirements of Rules 8-3 and 8-4.

- (5) If the budgeted time for trial is less than the remaining time available in the current trial session for which the trial is subject to call, the court may continue the trial to a subsequent trial session even if such continuance will have the effect of advancing for earlier trial a case having a later priority date.
- (6) The status of cases subject to call shall be determined by reference to the court's trial calendar, kept continually current, and which may be viewed on the court's Internet site.

8. **PLEADINGS:**

A. OPERATIVE: The operative pleadings on file at the time of the conference are:

- (1) COMPLAINT: The ^ complaint filed on ^.
  - (a) ANSWER: The ^ answer filed on ^.
  - (b) ANSWER: The ^ answer(s) of:
    - 1) ^ filed on ^.
  - (c) REPLY: The ^ reply filed on ^.
  - (d) REPLY: The ^ reply of:
    - 1) ^ filed on ^.
- (2) COUNTERCLAIM: The ^ counterclaim of ^ filed on ^.
  - (a) ANSWER: The ^ answer filed on ^.
  - (b) ANSWER: The ^ answer(s) of:
    - 1) ^ filed on ^.
  - (c) REPLY: The ^ reply filed on ^.
  - (d) REPLY: The ^ reply of:
    - 1) ^ filed on ^.
- (3) CROSS-CLAIM: The cross-claim of ^ filed on ^.
  - (a) ANSWER: The ^ answer filed on ^.
  - (b) ANSWER: The ^ answer(s) of:
    - 1) ^ filed on ^.
  - (c) REPLY: The ^ reply filed on ^.

- (d) REPLY: The ^ reply of:
        - 1) ^ filed on ^.
    - (4) THIRD-PARTY COMPLAINT: The third-party complaint of ^ filed on ^.
      - (a) ANSWER: The ^ answer filed on ^.
      - (b) ANSWER: The ^ answer(s) of:
        - 1) ^ filed on ^.
      - (c) REPLY: The ^ reply filed on ^.
      - (d) REPLY: The ^ reply of:
        - 1) ^ filed on ^.
  - B. ISSUES: The issues for trial shall be determined in accordance with the “ISSUES” paragraph below.
9. **DISCOVERY:** After discussion among the court and counsel, the court finds that discovery is completed^, except for depositions to be taken on or before ^. The parties may stipulate for additional discovery if the stipulation will not delay any trial or the progression of the case toward trial, and the court may grant additional discovery upon motion and hearing, upon the showing of good cause.
10. **WITNESSES:**
- A. ATTACHED LISTS: Witnesses for each party are named on the respective list of the parties attached hereto and marked as follows:
    - (1) For the plaintiff(s): Schedule ^.
    - (2) For the defendant(s): Schedule ^.
  - B. ADDITIONAL WITNESSES: Except rebuttal witnesses not now known, neither party may call as a witness at trial any person that is not on any one or more of the witness lists (without regard to the identity of the party submitting the list).
  - C. SUPPLEMENTING LISTS: Any party may add additional witnesses to such party’s witness list by filing with the court and mailing to the other counsel a list of the additional witnesses together with a summary of the testimony of each additional witness on or before ^. Thereafter, witnesses may be added to the witness list only with the permission of the court after showing of good cause.

- D. SUPPLEMENTING LISTS: Witnesses may be added to a witness list only with the permission of the court after showing of good cause.

11. **EXHIBITS:**

- A. ATTACHED LISTS: Each party disclosed the exhibits they respectively intend to introduce, to be the following:
- (1) For the plaintiff(s): Schedule ^.
  - (2) For the defendant(s): Schedule ^.
- B. ADDITIONALEXHIBITS: The parties are limited to the exhibits on any one or more of the final exhibit lists (without regard to the identity of the party submitting the list).
- C. SUPPLEMENTING LISTS: Exhibits may be added to the exhibit list only with the permission of the court given after showing of good cause.
- D. SUPPLEMENTING LISTS: Any party may add exhibits to such party's list at any time on or before ^ by filing with the court, and mailing to the other counsel, a list and description of the additional exhibits, and mailing to the other counsel a photocopy of the exhibits unless photocopying the exhibit is impractical or unduly expensive. After that date, exhibits may be added to the exhibit list only with the permission of the court given after showing of good cause.
- E. NONDOCUMENTARY/OVERSIZE EXHIBITS: Pursuant to Supreme Court rule:
- (1) The party offering any nondocumentary item of physical evidence shall provide a photograph, not exceeding 8½ by 11 inches and which fairly and accurately depicts the item, to the court reporter at the time the original exhibit is marked.
  - (2) The party offering any documentary item of evidence exceeding 8½ by 11 inches shall provide a reduced size photographic copy or photograph, not exceeding 8½ by 11 inches and which fairly and accurately depicts the item, to the court reporter at the time the original exhibit is marked.
  - (3) The court reporter shall refuse to mark and the Court may refuse to accept any such item submitted but not accompanied by such copy or photograph.
- F. MARKING EXHIBITS: All exhibits shall be marked by the official court reporter ("reporter"). Counsel shall not pre-mark exhibits except after consultation with and

obtaining approval of the reporter. Counsel shall appear at least 30 minutes prior to trial to present exhibits to the reporter for marking, unless counsel has made advance arrangements with the reporter for pre-marking of exhibits. If exhibits are too numerous to be marked within such 30 minute period, counsel shall make advance arrangements with the reporter for pre-marking of exhibits. Except for matters arising during trial which could not reasonably have been foreseen, all exhibits shall be marked prior to the commencement of trial.

- G. **COPIES OF EXHIBITS:** The party marking an exhibit shall furnish a copy of the exhibit for reference by the trial judge during the trial. If numerous exhibits are contemplated, such copies shall be placed in a three-ring binder indexed by exhibit number.

12. **STIPULATIONS:**

- A. During the pretrial conference, with the approval of the court, the respective counsel for all of the parties stipulated on behalf of their respective clients as follows:
- (1) The parties waive all objections on the listed exhibits identified by the letter “A” in the margin of the Schedules attached and stipulate that the same may be admitted without objection upon offer by either party.
  - (2) The parties waive foundation on the listed exhibits identified by the letter “B” in the margin of the Schedules attached and stipulate that the same may be admitted without foundation, but reserve any other objection to them.
  - (3) The parties reserve all objections on the listed exhibits identified by the letter “C” in the margin of the Schedules attached.
  - (4) ^.
- B. The stipulations (as amended by interlineation by the court if any appear) in Schedule(s) ^ attached hereto are incorporated by reference.
- C. The parties previously stipulated in the telephone progression conference (see Progression Order) that:
- (1) ^.

13. **TRIAL PROCEDURES:** After discussion between the court and counsel, it was determined that:

- A. RECORD REQUESTS: No “omnibus” request for verbatim record has been made pursuant to Supreme Court Rule 5A(2) of Practice and Procedure, and any trial proceeding for which a record is desired and not mandated by Supreme Court Rule 5A(1) of Practice and Procedure shall be specifically requested by counsel at the time of such proceeding.
- B. NOTE TAKING: Note taking by the jury shall be allowed, provided that such notes shall be retained by the bailiff during any recess and shall be destroyed at the conclusion of the trial. Such notes shall be deemed confidential to the particular juror, and shall not be subject to examination by any party or counsel.
- C. WITNESS SEQUESTRATION: Witness sequestration pursuant to Rule 615 is waived.
- D. WITNESS SEQUESTRATION: Pursuant to the request of a party under Rule 615, witnesses shall be excluded from the courtroom during the testimony of other witnesses so that excluded witnesses cannot hear the testimony of other witnesses. The parties and their respective attorneys are further prohibited from directly or indirectly communicating the content of a witness’s trial testimony to any other witness.
- E. VIDEOTAPE DEPOSITIONS: Unless otherwise stated on the deposition record at the commencement of such deposition and which shall be called to the court’s attention upon the offer thereof, any videotaped deposition:
  - (1) shall have the videotape marked as an exhibit by the official court reporter, and shall also have a written transcript thereof marked as a related exhibit, both of which exhibits shall be offered into evidence for purposes of the record only and shall not go to the jury; and,
  - (2) may be played to the jury without the concurrent taking down by the official court reporter of the played content thereof.
- F. PERMISSION TO APPROACH: Counsel may approach a witness without requesting advance permission from the court where it is obvious that the purpose of approaching relates to examination concerning an exhibit. Counsel may approach the official court



reporter without requesting advance permission from the court where it is obvious that the purpose of approaching relates to the marking or retrieving of an exhibit.

- G. USE OF COURTESY TITLES: Counsel shall address parties, witnesses, and each other in a formal manner, with the appropriate title (Mr., Mrs., Ms., Dr., etc.).
  - H. USE OF COURTESY TITLES: Counsel shall address jurors, parties, witnesses, and each other in a formal manner, with the appropriate title (Mr., Mrs., Ms., Dr., etc.).
  - I. SPEAKING TO JURORS: Counsel, parties, and witnesses shall not address members of the jury and any alternate juror(s) (and prior to completion of oath administration to the trial jury, members of the jury panel) in any fashion outside of the courtroom, including, but not limited to, customary greetings of “good morning” or “hello.” Counsel shall admonish all witnesses of this prohibition.
  - J. JUDGE’S CHAMBERS: During the trial, counsel shall not enter the judge’s chambers unless accompanied by opposing counsel.
  - K. ITEMIZATIONS OF COSTS: All itemizations of costs shall be submitted no later than the submission of the matter to the trier of fact at the conclusion of the trial.
14. **ISSUES:** After discussion between the court and counsel, it was determined that the pleadings adequately state the issues to be tried.
15. **ISSUES:**
- A. IDENTIFIED ISSUES: After discussion between the court and counsel, the issues listed in Schedule(s) ^ attached were determined to be the legal and factual issues.
  - B. IDENTIFIED ISSUES: After discussion between the court and counsel, the following were determined to be the legal and factual issues:
    - (1) ^.
    - (2) ^.
  - C. ADDITIONAL ISSUES: The parties are allowed until ^ to add additional issues to the issue list by filing with the court, and mailing to the other parties, a list of any additional legal or factual issues that the party maintains exists.
  - D. ISSUES LIMITED: The issues for trial are limited to the issues identified above and, to that extent, supersede all of the pleadings identified above.

- E. ISSUES SUPPLEMENTED: The issues for trial identified above shall supplement the pleadings identified above, but do not preclude any other issues properly raised by the pleadings.
16. **PRETRIAL MOTIONS:**
- A. The parties shall be allowed to file the following pretrial motions after the date of this pretrial conference: ^.
  - B. All such motions shall be filed on or before ^, and noticed in compliance with Rule 8-3 (and, if applicable, Rule 8-4) for hearing on or before ^.
  - C. No other pretrial motions, including, without limitation, motions for summary judgment and motions in limine, shall be hereafter filed or considered except upon showing of good cause together with a showing why such motion could not have been filed prior to the final pretrial conference in the exercise of reasonable diligence.
17. **PRETRIAL MOTIONS:** Neither party desires to file any additional pretrial motions, including, without limitation, motions for summary judgment and motions in limine, and none shall be hereafter filed or considered except upon showing of good cause.
18. **REQUESTED JURY INSTRUCTIONS:**
- A. All requested jury instructions shall be submitted to the Judge in sufficient time that the same shall be **received** by the Judge in chambers at least 10 days prior to trial. Copies of requests for instructions shall be served on opposing counsel.
  - B. Standard NJI or NJI2d instructions with no requested deviations or specific additions may be requested by reference to the **instruction number and title** only.
  - C. The instructions required by this paragraph are for the assistance of the court and to enable the parties to have the best possible chance of having instructions tendered in the language desired by the parties. The court will **not** file these instructions with the clerk. The formal request for instructions not included in the court's draft instructions shall be filed with the clerk. Counsel should avoid formal filing with the clerk prior to the formal instruction conference so as to avoid unnecessary filings in the court file.
19. **TRIAL BRIEFS:** All trial briefs shall be submitted in sufficient time that the same shall be **received** by the Judge at least 10 days prior to trial. All briefs shall be submitted to the Judge,

**not** filed with the clerk (see Uniform District Court Rule 5B). Copies shall be served on opposing counsel.

20. **DELIVERY PREFERENCES:** The court's preferences for methods of delivery of jury instructions (if applicable) and trial briefs are:

- (1st) by electronic mail (as attachment of word processing file, prefer WordPerfect format) to Internet address — [cassel08@nol.org](mailto:cassel08@nol.org) (note that 08 following cassel are numeric while all others are alphabetic);
- (2nd) on CDROM or 3.5" floppy diskette (prefer WordPerfect format) by personal delivery or by mail to P.O. Box 105, Ainsworth, NE 69210-0105;
- (3rd) hard copy by personal delivery or by mail to P.O. Box 105, Ainsworth, NE 69210-0105.

21. **OBJECTIONS:** The parties are allowed ten (10) days from the mailing of a copy of this order to them to file written objections to this order with the court clerk. A hearing will be held on any objections as noticed for hearing in compliance with Rule 8-3. Any objection not noticed for hearing in compliance with Rule 8-3 may be denied without a hearing.

Signed ^in chambers at ^**Ainsworth**, Nebraska, on ^;  
DEEMED ENTERED upon file stamp date by court clerk.  
If checked, the court clerk shall:

- ☒ Mail a copy of this order, with all attachments, to all counsel of record and any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- ☒ Note the decision on the trial docket as: [date of filing] **Signed "Pretrial Order"**  
**entered; case assigned for trial at Trial Session No.** [number from order].  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

**BY THE COURT:**

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**William B. Cassel**  
District Judge

Mailed to: